10th amendment, but it is incumbent on Congress to fix that, because it was Congress that created this problem 25 years ago.

Now, I am not the only one who thinks this. The Federal judiciary thinks this, too. In fact, Judge Pickering, the father of one of our colleagues here in the House, told me that he thinks we need to fix this. He has come up against cases like this. Here we have a statement from Judge Arbis in Pomeroy v. John Hopkins. He says the prevalent system of utilization review now in effect in most health care programs may warrant a reevaluation of ERISA by Congress so that its central purpose of protecting employees may be reconfirmed.

Another judge, Judge Gorton, in Turner v. Fallon says even more disturbing to this court is the failure of Congress to amend a statute that, due to the changing realities of the modern health care system, has gone conspicuously awry from it original intent.

We are talking about ERISA. We are talking about messages coming to us from the Federal bench.

Judge Bennett says in Prudential Insurance v. National Park Medical Center, if Congress wants the American citizens to have access to adequate health care, then Congress must accept its responsibility to define the scope of ERISA preemption and to enact legislation that will ensure every patient has access to that care.

The Supreme Court has looked at this and the Federal courts are working their way towards this goal case by case modifying this ERISA law, because they are seeing gross inequities, but it is a slow process.

Mr. Speaker, what are the courts doing? They are remanding these medical judgment cases back to the States.

The Supreme Court in Pegram v. Herdrich said decisions involving benefits stay in ERISA, but decisions involving medical judgment should go to the States where they have traditionally resided, where we have 200 years of case law. That is what they should be doing. That is what is in the Ganske-Dingell bill, the McCain-Edwards bill that should come before the House and before the Senate.

But there is an alternative. The alternative is, oh, let us just move all of that into the Federal courts. I cannot believe that Republicans would propose federalizing an entire area of health care.

Are we not the party that traditionally says this should be a purview for States? There are about how many States, there are now nine States that have passed HMO accountability laws, Arizona, California, Georgia, Louisiana, Maine, Oklahoma, Texas, the home State of President Bush, Washington, and West Virginia.

They have all enacted legislation that permits injured patients or their estates to hold health plans responsible for negligent decisions.

You know what? One of the bills on the other side of the Capitol, the House rules prevent me from naming names, not the McCain-Edwards bill, let us just say the Breaux-Frist bill, the Breaux-Frist bill would move all of that jurisdiction into Federal courts. That is a bad idea. It is unconstitutional if my colleagues care about the 10th amendment. But more than that, there are a lot of other reasons.

Let us look at them. We need to decide, should the proposed legislation, is it within the core functions of the Federal system? I am going to talk about that. Whether Federal courts have the capacity to take on that new business without additional resources; whether the Federal courts have the capacity to form their core functions and to fulfill their mandate for just, speedy and inexpensive determination of actions.

Chief Justice Rehnquist said this, the principle was enunciated by Abraham Lincoln in the 19th century. Dwight Eisenhower in the 20th century, matters that can be handled adequately by the States should be left to them; matters that cannot be handled should be undertaken by the Federal Government.

In a proposal for a long-range plan for the Federal courts, Rehnquist has said, Congress should commit itself to conserving the Federal courts as a distinctive judicial forum. Civil and criminal jurisdiction should be a sign to the Federal courts only to further clearly define justified national interests leaving to the State courts the responsibility for adjudicating all other matters, and that means specifically health care.

Federal courts are not the appropriate forum for deciding cases from HMO negligent decisions.

Just last year, the Judicial Conference of the United States stated ''personal injury claims arising from the provision or denial of medical treatment have historically been governed by State tort law and suits on such claims have traditionally and satisfactorily been resolved primarily in the State system.''

The State courts have significant experience in personal injury claims and would be an appropriate forum to consider personal injury actions pertaining to health care treatment. Federal courts cannot handle this. They already have a huge number of judicial vacancies under Federal law.

They are obligated to give priority to criminal cases. Criminal case filings go up every year. You could not get a speedy resolution to these types of decisions, especially if we are coupling this with a review system.

I say to my colleagues we are going to have this debate soon. The gentleman from Georgia (Mr. NORWOOD), the gentleman from Michigan (Mr. DINGELL), I, and others, we have modified our bill. We have taken language from Senator NICKLES. We have taken language from the gentleman from Tennessee (Mr. HILLEARY). We have taken language from the gentleman from Arizona (Mr. SHADEGG).

We have made a good-faith effort to come up with a bill that includes a lot of ideas from other people. We have significant protections for employers. Employers cannot be responsible unless they directly participate in a decision.

The vast majority of employers do not want to have anything to do with a medical decision. They do not even want to know what is going on medically with their employees. It is a matter of privacy, and their employees do not want the employers to know.

So those are real and solid protections. The cost factor for our bill in terms of liability would be less than $2 per month per employee. That is less than the cost of a Big Mac meal.

We should remand these medical judgment decisions back to the States. We should fix the ERISA portion, and we should make sure that people get a fair shake from their HMOs.

This is something, Mr. Speaker, that I expect will come up shortly in the Senate and then come shortly to the House. I implore my colleagues to do the right thing, become familiar with the provisions of our bill, the Ganske-Dingell Bipartisan Patient Protection Law of 2001.

Let us pass this finally and let us do something for all of our constituents, all of them have experience with this through either a friend, a family member, a fellow worker. Eighty-five percent of the country has indicated that they think that Congress should pass a law to protect patients from HMO abuses.

Let us get this done finally, and let us put it on the President's desk. Our bill satisfies the President's principles. It is modeled after Texas law, and it would be a great victory for our constituents and the people who get their health care from their employers.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. VISCLOSKY (at the request of Mr. GEPHARDT) for today on account of attending a friend's funeral.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. GREEN of Texas) to revise and extend their remarks and include extraneous material:)

Mr. LIPINSKI, for 5 minutes, today.

Mr. SHERMAN, for 5 minutes, today.

Mr. DEFAZIO, for 5 minutes, today.